IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.08.2006

CORAM:

THE HON'BLE MR.JUSTICE.S.RAJESWARAN

CRP(PD).No.1728 OF 2003
and
C.M.P.No.12750 oF 2003

S.Gopal ... Petitioner/Respondent

-Vs-

1.M.R.Shanmugaramaswamy

2.A.R.Thangamuthu .. Respondents/Respondents

PRAYER: Civil Revision Petition against the fair and final order dated 21.4.2003 and made in I.A.No.78 of 2003 in I.A.No.925 of 2002 in O.S.No.651 of 2002 on the file of Principal Sub-ordinate Court, Erode.

For Petitioner : Mr.G.Vivekanand
For Respondents : M/s.V.P.Sengootuvel, for R1.

O R D E R

The plaintiff is the revision petitioner.

2. The suit was filed in O.S.No.651 of 2002 on the file of Principal Sub-ordinate Court, Erode for recovery of a sum of Rs.1,52,500/-. Along with the suit, he filed an application in I.A.No.925 of 2002 under Order 38 Rule 5 and 6 read with Section 151 of C.P.C. for ad interim attachment of amount deposited by the second respondent in O.S.No.548 of 2000 filed by the 1st respondent herein on the file Sub-Court, Erode. While so, the first respondent filed I.A.No.78 of 2003 for impleading himself in the said I.A.No.925 of 2002. To that petition, the plaintiff filed a detailed counter explaining how the respondents herein who are closely related are trying to defeat his legitimate claim.

3. It is stated that the trial Court on an erroneous appreciation of facts and law, allowed the I.A.No.78 of 2003 and impleaded the first respondent in I.A.No.925 of 2002 by order dated 21.4.2003. Aggrieved against the said order, the above Civil Revision

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Petition has been filed by the plaintiff.

4. The case of the plaintiff is that the first respondent herein as a third party filed an application in I.A.No.78 of 2003 in O.S.No.651/2002 to implead himself as a party respondent in I.A.No.925 of 2002. The plaintiff/revision petitioner in I.A.No.925/2002 prayed for directing the respondent namely, the second respondent herein/the defendant in the suit to furnish security for the suit amount failing which ordering the attachment of the sum of Rs.2,79,000/- which has been deposited by the second respondent/the defendant in the suit in O.S.No.548 of 2000 on the file of II Additional Sub-ordinate Judge, Erode. It was the further case of the plaintiff/revision petitioner that if the deposited sum was allowed to be withdrawn, he would not be able to realise the decretal amount in the present suit. Therefore, this application was filed in I.A.No.925/2002. In the said application, the first respondent herein as a third party sought to implead himself.

5. It was the specific case of the first respondent/the third party in the said impleading application that he had filed O.S.No.548 of 2000 on the file of II Additional Sub-ordinate Judge, Erode against the second respondent/the defendant in the suit in O.S.No.651/2002 for recovery of money. He had also filed an application in I.A.No.890 of 2000 under Order 38 Rule 5 for attachment before Judgment. The trial Court allowed the petition and consequently the second respondent/the defendant in that suit deposited a sum of Rs.2,79,000/- and prayed to raise the attachment. The trial Court was pleased to accept the deposit and raised the attachment. It is also stated by the petitioner/the third party that the suit was also decreed on 20.6.2002.

6. It is stated by the first respondent herein that the revision petitioner along with the second respondent have joined together in collusive manner and tried to defeat the interest of the 1st respondent herein. Therefore, it was his case that he was a necessary party in the application in I.A.No.925/2002 and therefore he filed I.A.No.78/2003 to implead himself in the above application namely, I.A.No.925 of 2002. Though the said application was resisted by the the revision petitioner/plaintiff, the trial Court in due consideration of the facts and circumstances of the case, allowed the application thereby the 1st respondent herein was impleaded as a party in I.A.No.925 of 2002.

7. Heard the learned counsel for the revision petitioner and also the learned counsel for the 1st respondent. I have also gone through the affidavit and documents filed in support of this petition.

8. It is a case where the impleading petition was allowed by the

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Court below in due appreciation of the facts and circumstances. The lower Court while allowing this petition has clearly stated there was bonafide in the request of the party who sought to be impleaded in the application. Moreover, the revision petitioner/plaintiff in application I.A.No.925 of 2002 has sought for direction to the 2nd respondent/the defendant in O.S.No.651/2002 to furnish security for the suit amount failing which ordering the attachment of a sum of Rs.2,79,000/- which has been deposited by the second respondent herein in O.S.No.548/2000 at the instance of the 1st respondent herein. Therefore, unless and otherwise the 1st respondent is heard the 1st respondent's interest will definitely be affected as the suit filed by him against the 2nd respondent in O.S.No.548/2000 was said to be decreed in his favour. Therefore, the order passed by the Court below holding that the 1st respondent is a necessary party in I.A.No.925/2002 is justifiable and I do not find any infirmity nor illegality in the said order.

9. Therefore, I am unable to agree with the contentions raised by the learned counsel for the petitioner and consequently the Civil Revision Petition is dismissed and the order passed by the Court below is confirmed. No costs. Consequently, connected C.M.P. No.12750/2003 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sgl/sks

To

The Principal Subordinate Judge, Erode.

+1cc to Mr.V.P.Sengottuvel, Advocate Sr 36404

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km/31.8.

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